

JAMES E. TORGERSON (Alaska Bar No. 8509120)
YVONNE LAMOUREUX (Alaska Bar No. 0512124)
HELLER EHRMAN LLP
510 L Street, Suite 500
Anchorage, AK 99501-1959
Telephone: (907) 277-1900
Facsimile: (907) 277-1920
Jim.torgerson@hellerehrman.com
Yvonne.lamoureux@hellerehrman.com

Attorneys for Intervenor-Defendant
NANA REGIONAL CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON,
DAVID SWAN and JOSEPH SWAN,
Plaintiffs,

v.

TECK COMINCO ALASKA
INCORPORATED,
Defendant,
NANA REGIONAL CORPORATION, and
NORTHWEST ARCTIC BOROUGH,
Intervenor-Defendants.

Case No.: A:04-cv-0049 (JWS)

**JOINT MOTION TO STRIKE
PLAINTIFFS' REPLIES AT
DOCKETS 246 AND 248 OR, IN
THE ALTERNATIVE, REQUEST
TO FILE REPLIES**

Teck Cominco Alaska Incorporated, NANA Regional Corporation, and Northwest Arctic Borough (collectively, Defendants) ask the Court to strike Plaintiffs' reply briefs at dockets 246 and 248 or, in the alternative request that Defendants also be allowed to file replies in support of their objections to the Plaintiffs' exhibits. The Order for Pre-Trial Proceedings and Final Pre-Trial Conference required that (1) all objections to exhibits be filed by January 29, 2008; and (2) the offering party's arguments and

1 authorities in favor of admission be filed by February 5, 2008.¹ The Order requires that
 2 the objections “be concise.”² The Order does not indicate that any reply briefs are
 3 allowed to be filed, nor is there a deadline set for any reply briefs.

4 The parties’, including the Plaintiffs’, understanding that no reply briefs would be
 5 filed regarding the admissibility of exhibits is demonstrated and bolstered by the parties’
 6 Joint Request for Scheduling Order, seeking clarification of deadlines for responding to
 7 then pending motions.³ In their Joint Request, the parties all asked the Court to set a
 8 deadline for replies in support of motions regarding *witnesses*, but did not ask for a
 9 deadline for replies in support of motions regarding *exhibits*. The reason the Defendants
 10 treated the two subjects differently is because they understood that no replies regarding
 11 exhibits were allowed.⁴ The Court, in turn, granted the parties’ request and issued a
 12 Scheduling Order.⁵ It set the deadline for responding to Plaintiffs’ motions regarding
 13 exhibits but provided no deadline for replies to objections to exhibits. As to motions
 14 regarding witnesses, however, it set deadlines for responses, or oppositions, and for
 15 replies.⁶ The absence of a reply deadline for briefing regarding exhibits further
 16 demonstrates that reply briefs are not permitted.

17 Plaintiffs filed three separate pleadings objecting to Defendants’ exhibits⁷ even
 18 though Defendants only filed two exhibit lists.⁸ Plaintiffs titled two of those pleadings as
 19 Objections and Motions in Limine to Exclude the exhibits.⁹ Defendants filed their
 20 arguments and authorities in favor of admission of the exhibits by February 5, 2008.¹⁰
 21 On February 12 and 13, 2008, Plaintiffs filed two reply briefs.¹¹

23 ¹ Doc. 177 at 3-4.

24 ² Doc. 177 at 4.

25 ³ Doc. 229.

26 ⁴ Doc. 229 at 2.

27 ⁵ Doc. 230.

28 ⁶ Doc. 230 at 2.

⁷ Doc. 208, 215, 220.

⁸ Doc. 191, 194.

⁹ Doc. 208, 220.

¹⁰ Doc. 232, 236, 237, 240.

¹¹ Doc. 246, 248.

1 Plaintiffs' reply briefs are not permitted under the Court's Order. The Plaintiffs
 2 titled two of their briefs objecting to Defendants' exhibits as Objections *and Motions in*
 3 *Limine*, apparently hoping that by so doing they could escape the limits the Court set on
 4 briefing regarding exhibits.¹² But the titles Plaintiffs give their briefs should make no
 5 difference regarding the application of the Court's briefing schedule.

6 Based on the Court's Order, the Defendants have not filed any replies regarding
 7 the admissibility of exhibits. Plaintiffs also should be required to comply with the Order.
 8 Plaintiffs' Replies at Docket 246 and 248 should be struck.

9 Alternatively, if Plaintiffs' replies are permitted, Defendants respectfully request
 10 that they also be allowed to file replies in support of their objections to the Plaintiffs'
 11 exhibits. Defendants ask that they be given seven (7) calendars days from the date of the
 12 Court's Order, which is the amount of time Plaintiffs took before filing their first reply.

13 Dated: February 14, 2008

14 Respectfully submitted,

15 Attorneys for Intervenor-Defendant
 16 NANA REGIONAL CORP.

17
 18 By /s/ James e. Torgerson
 19 JAMES E. TORGERSON (BAR NO. 8509120)
 20 YVONNE LAMOUREUX (BAR NO. 0512124)
 21 Heller Ehrman LLP
 22 510 L Street, Suite 500
 23 Anchorage, AK 99501
 24 Telephone: 907-277-1900
 25 Jim.torgerson@hellerehrman.com
 26 Yvonne.lamoureux@hellerehrman.com

27 Dated: February 14, 2008

28 Respectfully submitted,

¹² Yet, it is the Plaintiffs who make accusations of "litigation gamemanship."
 Doc. 246 at 5.

Heller Ehrman LLP
510 L STREET, SUITE 500
ANCHORAGE, AK 99501-1959
TELEPHONE (907) 277-1900

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HARTIG RHODES HOGE & LEKISCH
Defendant
TECK COMINCO ALASKA INCORPORATED

By /s/ Sean Halloran
SEAN HALLORAN (BAR NO. 9211080)

Dated: February 14, 2008

Respectfully submitted,

LANDYE BENNETT BLUMSTEIN, LLP
Intervenor-Defendant
NORTHWEST ARCTIC BOROUGH

By /s/ Thane W. Tienison
THANE W. TIENSON (PRO HAC VICE)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing JOINT MOTION TO STRIKE PLAINTIFFS' REPLIES AT DOCKETS 246 AND 248 was served via the method indicated below this 14th day of February, 2008, on the following parties:

Luke W. Cole	Counsel for Plaintiffs
Center on Race, Poverty & the Environment	
47 Kearny Street, Suite 804	Served via: Electronic transmission
San Francisco, CA 94108	
luke@igc.org	
Nancy S. Wainwright	Counsel for Plaintiffs
Law Offices of Nancy S. Wainwright	
13030 Back Road, Suite 555	Served via: U.S. Mail only
Anchorage, AK 99515-3538	
Sean Halloran	Counsel for Defendant Teck Cominco
Hartig Rhodes Hoge & Lekisch, P.C.	
717 K Street	Served via: Electronic transmission
Anchorage, AK 99501	
sean.halloran@hartig.com	
David S. Case	Counsel for Intervenor-Defendant
Landye Bennett Blumstein LLP	Northwest Arctic Borough
701 West 8 th Avenue, Suite 1200	
Anchorage, AK 99501	Served via: Electronic transmission
dcase@lbblawyers.com	

/s/ James E. Torgerson

JAMES E. TORGERSON (BAR NO. 8509120)
YVONNE LAMOUREUX (BAR NO. 0512124)
HELLER EHRMAN LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: 907-277-1900
Jim.torgerson@hellerehrman.com
Yvonne.lamoureux@hellerehrman.com

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